Remarks

This Application has been reviewed in light of the Office Action mailed March 3, 2005. All pending claims 1-42 were rejected in the Office Action. Claims 10, 19, 23, 27-35, and 39 have been amended to further clarify the claimed subject matter. Applicants respectfully request reconsideration and allowance of all pending Claims 1-42.

Information Disclosure Statement

An Information Disclosure Statement (IDS) and accompanying PTO-1449 form were submitted on July 29, 2004. The Examiner has not provided an indication that each of the references listed in the IDS have been considered by the Examiner. For the Examiner's convenience, the Applicants have enclosed a copy of the previously submitted IDS and PTO-1449 form. Applicant respectfully requests that the Examiner consider the cited references, if not already considered, and provide the appropriate indication that they have been considered by initialing next to the references on the PTO-1449 form.

In the Specification

The Examiner objects to the specification as containing an informality. Applicants have amended the specification as suggested by the Examiner. Therefore, reconsideration and favorable action are requested.

Double Patenting

The Examiner provisionally rejects Claims 10-42 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-13, and 17-31 of copending Patent Application No. 10/039,129. As this is a provisional double patenting rejection, Applicants defer the decision to file a terminal disclaimer or traverse the rejection until the Examiner has indicated that both the present Application and co-pending Patent Application No. 10/039,129 include allowable subject matter.

Section 101 Rejections

Claims 27-34 are rejected under 35 U.S.C. §101 because the Office Action contends that the claimed invention is directed to non-statutory subject matter. While Applicants respectfully disagree that "logic encoded in media" reads on non-statutory subject matter, Applicants have amended Claims 27-34 to advance prosecution of the present application.

Specifically, Applicants have amended independent Claim 27, from which Claims 28-30 depend, and independent Claim 31, from which Claims 32-34 depend, to recite "Computer readable media encoded with logic."

Section 112 Rejections

Claims 4, 15, 21, 26, 29, 31-34, 37, and 42 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Applicants respectfully traverse this rejection.

> M.P.E.P. §2173.02 states that the test for definiteness is:
>
> Definiteness of claim language must be analyzed, not in a vacuum, but in light of:
> (A) The content of the particular application disclosure;
> (B) The teachings of the prior art; and
> (C) The claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made.

With respect to Claims 4, 15, 21, 26, 29, 34, 37, and 42, the Office Action states that "the use of the term 'periodic' or 'periodically' renders each claim ambiguous." Office Action, page 10. Applicants respectfully submit that one possessing the ordinary level of skill in the pertinent art would know what is meant by "periodic" or "periodically" in the context of the claims. Furthermore, the specification of the present application provides further context:

> In accordance with a particular embodiment of the present invention, memory module 66 may be configured to "poll" consoles 36-39 and/or memory modules 45-48 periodically, in order to collect and/or store real-time and/or historical console information associated with computing devices 32-35. In a particular embodiment, console server 50 communicates with one or more of computing devices 32-35, at predetermined time intervals, to collect real-time and/or historical console information.

Application, page 14, line 31 to page 15, line 8. The specification further states that:

> In another embodiment, all console information regarding server processing cards 32-35 and/or management interface card 124, are collected at a single device, for example, server processing card 32 or management network interface card 124. In this embodiment, console server 50 communicates with server processing card 32 or management network interface card 124 periodically to collect all console information regarding server processing cards 32-35 and/or management network interface card 124.

Application, page 22, lines 10-19.

Applicants further submit that the claim language in question is not indefinite simply because the Examiner can provide more than one example of situations fitting the claim language. That is to say, broad claim language does not equate to indefiniteness. *See* M.P.E.P. § 2173.04. For at least these reasons, Applicants respectfully submit that Claims 4, 15, 21, 26, 29, 34, 37, and 42 particularly point out and distinctly claim the subject matter regarded by the Applicants as the invention. Therefore, reconsideration and favorable action are requested.

Claims 31 is rejected under 35 U.S.C. §112, second paragraph, as having insufficient antecedent basis. Office Action, page 11. Applicants have amended Claim 31 to provide proper antecedent basis. Claims 32-34 depend from Claim 31 are were presumably rejected for the same reason as Claim 31. Since Claim 31 has been amended, each of Claims 32-34 should therefore have proper antecedent basis, and Applicants respectfully request that the rejection of Claims 31-34 be withdrawn.

Section 102 Rejections

Claims 10-13, 15-17, 19-21, 23-29, 31-37, and 39-42 are rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,167,358 issued to Othmer et al. ("*Othmer*"). Applicants respectfully disagree with this rejection.

Claim 10 is directed to a system including a first computing device, including a first console enabling manual control of the computing device. *Othmer* discloses a system "for monitoring a software application or a microprocessor on a distributed set of client computers in order to determine information, such as defects or usage patterns, about the software application or microprocessor." *Othmer*, column 4, lines 19-23. The Examiner does not specify which component of *Othmer* satisfies the claim element of a console and instead appears to be relying on inherency. *See* Office Action, page 11. Applicants note that "[i]n relying on the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art." *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) *(emphasis in original)*; M.P.E.P. § 2112. The mere

fact that a certain result or characteristic <u>may</u> occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. *See In re Rijckaert*, 9 F.3d 1531, 1534 (Fed. Cir. 1993). The Office Action fails to provide the required basis in fact or technical reasoning to support a rejection based on inherency.

In addition, as indicated above, Claim 10 recites a first console enabling manual control of the computing device. The Office Action seems to equate the nub 42 of *Othmer* with the console interface of Claim 10. *See* Office Action, page 11. However, *Othmer* discloses a passive nub 42 that "gathers information about the operation and execution of a software application being executed by the computer-based system or about the operation of the microprocessor within the computer-based system. . . ." *Othmer*, column 4, lines 63-66. No component of *Othmer* enables manual control of a computing device. For at least these reasons, Applicants respectfully submit that Claim 10 is patentably distinguishable from the cited portions of *Othmer* and request that the rejection of Claim 10 be withdrawn.

Claims 19, 23, 27, 31, 35, and 39 each include similar limitations to those discussed above regarding Claim 1. Claims 11-13 and 15-17 depend from Claim 10, Claims 20 and 21 depend from Claim 19, Claims 24-26 depend from Claim 23, Claims 28 and 29 depend from Claim 27, Claims 32-34 depend from Claim 31, Claims 36 and 37 depend from Claim 35, and Claims 40-42 depend from Claim 39. For at least these reasons, Applicants respectfully submit that Claims 11-13, 15-17, 19-21, 23-29, 31-37, and 39-42 are patentably distinguishable from the cited portions of *Othmer* and request that the rejection of Claims 11-13, 15-17, 19-21, 23-29, 31-37, and 39-42 be withdrawn.

Section 103 Rejections

Claims 1-9 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Othmer*, as set forth above in view of U.S. Patent No. 6,662,226 issued to Wang et al. ("*Wang*"). Applicants respectfully traverse this rejection for the reasons given below.

Claim 1 is directed to a computing device including a console and a console interface operable to transmit console information associated with the console. The computing device also includes a memory module operable to receive the console information and store the console information for retrieval by an operator of the computing device.

Regarding Claim 1, the Examiner has not cited a proper motivation to modify *Othmer* to incorporate the teachings of *Wang*. The Office Action states that:

Othmer fails to disclose *an operator of the computing device* may retrieve the stored console information. In a related art, Wang discloses storing console information (Wang, Col 2, lines 4-9) for retrieval by an operator of the computing device (Wang Col 2, lines 12-14). It would have been obvious to one of ordinary skill in the art at the time of invention to modify Othemer's system to allow an operator of the computing device to retrieve stored console information as disclosed by Wang, in order to allow a user to locally manage the stored console information (Wang Col 2, lines 35-39).

Office Action, page 14. However, *Othmer* may not properly be combined with the teachings of *Wang*. No motivation is present in either reference that would suggest to one of ordinary skill in the art at the time of the invention to modify *Othmer* as suggested by the Examiner. The information relied on by the Examiner as stored console information is "static hardware and software configuration information, dynamic system and application information, and application-specific information" gathered by client nub 82 for debugging and testing purposes. *Othmer*, column 2, lines 43-57 and column 9, lines 50-54. *Wang*, on the other hand, records the activities associated with a given interactive session where the interactive session comprises a series of screen displays and associated user interface events. *See Wang*, Title and column 2, lines 6-8. Thus, Wang tracks user activity through user interface events and screen displays, while *Othmer* gathers system configuration and application information of remote computers for debugging and testing purposes. There is no similarity between the information collected or the stated purposes of *Othmer* and *Wang*. Modifying *Othmer* to incorporate the teachings of *Wang* would constitute the essence of hindsight reconstruction prohibited by both the M.P.E.P. and the Federal Circuit. For at least these reasons, Applicants respectfully request that the rejection of Claim 1 be withdrawn.

Claims 2-9 depend from Claim 1. Therefore, Applicants respectfully request that the rejections of Claims 2-9 be withdrawn for the same reasons as those discussed above regarding Claim 1.

In addition, Claims 14, 22, 30, and 38 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Othmer*, and Examiner's official notice. Claim 14 depends from Claim 10, Claim 22 depends from Claim 19, Claim 30 depends from Claim 27, and Claim 38 depends

from Claim 35. Claims 14, 22, 30, and 38 are therefore believed to be patentable for the same reasons as those discussed above with regard to their respective independent claims.

Further, Claim 18 is rejected under 35 U.S.C. §103(a) as being unpatentable over *Othmer* and U.S. Patent No. 6,408,334 issued to Bassman ("*Bassman*"). Claim 18 depends from Claim 10 and is believed to be patentable for the same reasons as those discussed above with regarding Claim 10.

CONCLUSION

Applicants have made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicants respectfully request full allowance of all pending claims.

If the Examiner feels that a telephone conference would advance prosecution of this Application in any manner, the Examiner is invited to contact Luke K. Pedersen, Attorney for Applicants, at the Examiner's convenience at (214) 953-6511.

No fee is believed to be due. However, the Commissioner is hereby authorized to charge any additional fees or credit any overpayment to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,

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